



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 274-3350 • FAX 916 285-0134
www.boe.ca.gov

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No. 2012/052

November 28, 2012

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

PROPERTY TAX RULE 462.040,
CHANGE IN OWNERSHIP – JOINT TENANCIES

On August 27, 2012, Board staff met with interested parties to discuss proposed changes to Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*, as proposed in a petition submitted by the California Assessors' Association. Subsequent to the comments received during the August 27 meeting and other comments received from interested parties, staff developed the enclosed draft of Rule 462.040 showing proposed amendments in strike-out and underscore format.

Interested parties may provide comments regarding the proposed amendments, and may include suggestions for alternative language. Please submit your comments by December 28, 2012 to Ms. Glenna Schultz by email to glenna.schultz@boe.ca.gov or mailed to the above address. It is anticipated that a second interested parties meeting will be held on January 29, 2013 at the Board's headquarters, 450 N Street, Room 122, beginning at 9:30 a.m.

All documents regarding this project are posted on the Board's website at www.boe.ca.gov/proptaxes/rule462040.htm. If you have questions regarding the proposed amendments to Rule 462.040, you may contact Ms. Schultz at 1-916-274-3362.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk

Rule 462.040. CHANGE IN OWNERSHIP – JOINT TENANCIES.

Authority Cited: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust, and after such creation or transfer, the transferor(s) is one of all transferor(s) are among the joint tenants. Such a transferor(s) who~~ is also a transferee(s) and is, therefore, considered to be an "original transferors" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an "original transferor" acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the "original transferor," such spouse shall also be considered to be an "original transferor." "Spouse" includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. Any joint tenant may also become an "original transferor" by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. However, the transfer to the trust must occur on or after November 13, 2003 and before the effective date of the amendments adding this sentence. All other initial and subsequent joint tenants are considered to be "other than original transferors." To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both "original transferors."

~~Example 4-1 5:~~ A and B purchase property as joint tenants. ~~Later~~ On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors." If A and B had transferred their interests into trust one day after the effective date of the amendments adding this sentence, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

1 Example 5 ~~6~~: A and B purchase property as joint tenants. A and B, as joint tenants, transfer
2 to A, B, C, and D, as joint tenants. No change in ownership because A and B, the
3 transferors, are included among the transferees and are, therefore, "original transferors." (C
4 and D are "other than original transferors.") Likewise, if A, as the sole owner, had
5 transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an
6 "original transferor" and B, C, and D would be "other than original transferors".

7 Example 6 ~~7~~: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to
8 A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B,
9 the transferors, are included among the transferees and are, therefore, "original transferors."
10 E is also an "original transferor." (C and D are "other than original transferors.")

11 Example 7-1 ~~8~~: A, B, and C are joint tenants and A is an "original transferor." A is the sole
12 owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B
13 and C are "other than original transferors." A dies. A's interest passes by operation of law to
14 B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to
15 B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor"
16 because he did not acquire his interest from A or during the period that A held an interest in
17 the initial joint tenancy.

18 Example 7-2 ~~9~~: A transfers to A and B as joint tenants. A is an "original transferor." C is A's
19 registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint
20 tenants, and C is A's spouse. C is an "original transferor" because he was the spouse
21 registered domestic partner of an "original transferor," and he acquired an interest by means
22 of a transfer from A.

23 Example 7-3 ~~10~~: A and B transfer to A and B as joint tenants. A is an "original transferor."
24 A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B, as joint
25 tenants, transfer to A, B, and C as joint tenants. C is A's registered domestic partner. C is an
26 "original transferor" because C was the registered domestic partner of an "original
27 transferor" and C acquired an interest by means of a transfer from A.

28 Example 8 ~~11~~: A and B acquire real property as joint tenants. A and B, as joint tenants,
29 transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the
30 transferred interests because A is not one of the transferees.

31 Example 9 ~~12~~: A and B purchase property as joint tenants, and transfer their joint tenancy
32 interests to each other through their respective trusts. A and B become "original transferors."
33 On August 13, 2003, A and B sell a 50% percent interest to C and D, with the deed showing
34 A, B, C, and D as joint tenants. A and B become "original transferors." On December 13,
35 2003, C and D then transfer their joint tenancy interests to each other through their trusts, so
36 that both become "original transferors." On January 13, 2004, A and B then sell their
37 remaining 50% percent to C and D, and go off title. Under circumstances where application
38 of the step-transaction doctrine to disregard the form of the transaction would be appropriate
39 due to their intent to avoid a change in ownership, A, B, C, and D do not become "original
40 transferors" as the result of their transfers to each other.

41 (2) The transfer terminates an "original transferor's" interest in a joint tenancy described in
42 (b)(1) and the interest vests in whole or in part in the remaining "original transferor(s)"; except

that, upon the termination of the interest of the last surviving "original transferor," there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 13: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant.

~~Example 14: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors." C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal, and B was the last surviving "original transferor."~~

(3) The transfer terminates a joint tenancy interest held by "other than an original transferor" in a joint tenancy described in (b)(1) and the interest is transferred either to an "original transferor," or to all the remaining joint tenants, provided that one of the remaining joint tenants is an "original transferor." The "original transferor" status of any remaining joint tenants ceases when a joint tenancy is terminated.

~~Example 15: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. C, not an "original transferor," grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor."~~

~~Example 16: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors." A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors." C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. C, not an "original transferor," grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor." A D dies and AD's joint tenancy interest passes to B by operation of law. Since B is an "original transferor," there is no without a change in ownership, because B is an "original transferor." Upon AD's death, the joint tenancy is terminated and B ceases to be an "original transferor."~~

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

1 (B) a A transfer terminating the joint tenancy and creating a tenancy in common of
2 equal interests.

3 (C) a A transfer terminating a joint tenancy and creating or transferring to a legal entity
4 when the interests of the transferors and transferees remain the same after the transfer. (Such
5 transferees shall be considered to be the "original co-owners" for purposes of determining
6 whether a change in ownership occurs upon the subsequent transfer of the ownership interests in
7 the property.)

8 (5) The transfer is one to which the interspousal exclusion or the registered domestic
9 partner exclusion pursuant to the provisions of section 62(p) of the Revenue and Taxation Code
10 applies.

11 (6) The transfer is of a joint tenancy interest of less than five percent of the value of the total
12 property and has a value of less than \$10,000; provided, however, that transfers of such interests
13 during any one assessment year (the period from January 1 through December 31) shall be
14 accumulated for the purpose of determining the percentage interest and value transferred. When
15 the value of accumulated interests transferred during any assessment year equals or exceeds five
16 percent of the value of the total property or \$10,000, then only that percentage of the property
17 represented by the transferred accumulated interests shall be reappraised. For purposes of this
18 subsection, the "accumulated interests transferred" shall not include any transfer of an interest
19 that is otherwise excluded from change in ownership.

20 (7) The transfer is one to which the parent-child or grandparent-grandchild exclusion
21 applies, and for which a timely claim has been filed as required by law.

22 (c) **Rebuttable Presumption.** For purposes of this section, for joint tenancies created on or
23 before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in
24 property as of March 1, 1975, is an "original transferor." This presumption is not applicable to
25 joint tenancies created after March 1, 1975.

26 (d) **Reasonable Cause.** For purposes of this section, the assessor may consider persons holding
27 joint title to property, such as tenants in common, to be joint tenants and "original transferors" if
28 there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each
29 person was a transferor among the persons holding title. "Reasonable cause" means a deed,
30 Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a
31 transferor among the joint tenants, unless circumstances causing the application of the step
32 transaction exist.

33 Example 14 17: A and B jointly purchase their primary residence and title is recorded as
34 tenants in common. The sales contract states that A and B intended to take title as joint
35 tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their~~
36 ~~respective interests in the property to their trusts for the benefit of each other.~~ The assessor
37 may determine that the sales contract and trust instruments establishes that A and B intended
38 to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original~~
39 ~~transferor."~~